

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 19, 1994

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

Re: In re PR File No. 94-SP3

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the EMERGENCY MOTION OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA FOR A 45-DAY EXTENSION OF TIME TO FILE REPLY COMMENTS in the above-referenced docket.

Also enclosed is an additional copy of each document. Please file-stamp each copy and return them to me in the enclosed, self-addressed, postage pre-paid envelope.

If you have any questions, please call the undersigned at (415) 703-2047.

Very truly yours,

Ellen S. LeVine
Principal Counsel

ESL:jmc

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of)
Section 3(n) and 332 of the) PR File No. 94-SP3
Communications Act)
)
Regulatory Treatment of Mobile Services)

DOCKET FILE COPY ORIGINAL

**EMERGENCY MOTION OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA FOR A 45-DAY EXTENSION OF TIME
TO FILE REPLY COMMENTS**

Pursuant to Sections 1.41 and 1.46 of the Rules of Practice and Procedure, 47 C.F.R. §§1.41 and 1.46, of the Federal Communications Commission ("FCC"), the People of the State of California and the Public Utilities Commission of the State of California ("CPUC") hereby request that the FCC extend by 45 days, to and including November 18, 1994, the time in which the CPUC may file reply comments to oppositions to its petition to retain regulatory authority over intrastate cellular service rates. Reply comments are currently due October 4, 1994, fifteen days after the date for filing oppositions and responses to state petitions. In support of its request, the CPUC states as follows:

1. On August 8, 1994, in accordance with the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") and the FCC's Second Report and Order in the above-referenced docket implementing the Budget Act, the CPUC filed its Petition to Retain State Regulatory Authority Over Intrastate Cellular Service Rates. In its petition, the CPUC demonstrated that the market for cellular

services in California is not currently competitive, and hence market conditions are not yet sufficient to ensure just, reasonable and nondiscriminatory rates for cellular service in California in the absence of state regulatory oversight. Based on its showing, and consistent with congressional intent embodied in the Budget Act, the CPUC respectfully requested the FCC not to preempt the CPUC from continuing to exercise regulatory oversight of intrastate cellular service rates until effective competition for cellular service emerges in California.¹

2. On August 18, 1994, the FCC gave notice in the Federal Register that eight state petitions, including California's, had been filed with the FCC. Parties were accorded until September 19, 1994 to file their oppositions and responses to the state petitions, a period a nearly six weeks from the filing of such petitions.

3. On September 19, 1994, the CPUC received hand-delivered copies of oppositions by the Cellular Carriers Association of California ("CCAC") and Cellular One. These two oppositions alone total over 200 pages, and include studies, data, and claims that will require careful and thorough review by the CPUC in order to respond completely. Such review, however, cannot

1. Based on information available at the time of filing its petition, the CPUC stated that it anticipates that effective competition from alternate providers of cellular service will emerge in intrastate markets by March 1, 1996, or eighteen months from September 1, 1994.

reasonably be undertaken by the CPUC in the short time frame allotted by the FCC for reply comments in this proceeding.

4. Currently, reply comments by the CPUC are due October 4, 1994. While ostensibly the CPUC and other states have been given 15 days to reply, in reality, this period is far less. As a practical matter, three to four days are likely to elapse before the CPUC obtains mailed copies of what are likely to be numerous and, based on the hand-delivered responses, voluminous oppositions to its petition. Once received, the CPUC must then complete its analysis and finalize its comments by Monday, October 3, the day on which the CPUC must tender by express overnight mail service its filing to the FCC in order to be timely filed on October 4.

5. In addition to the above, the CPUC must respond to a motion filed by CCAC to reject the CPUC's petition or, alternatively, to reject redacted information contained therein.

6. Under these circumstances, the CPUC will have only six or seven business days in which to review and analyze the oppositions to its petition, prepare and finalize its reply comments to such oppositions, and respond to CCAC's motion. Such a short time frame is simply not a sufficient, fair or reasonable period of time for the CPUC to undertake the careful and thoughtful analysis required in order to rebut successfully the claims made in the oppositions to the CPUC's filing and to sustain its burden of proof to retain regulatory oversight of intrastate cellular service rates until effective competition emerges for intrastate cellular services.

7. Accordingly, given the length of the two oppositions hand-delivered to the CPUC, and given the strong likelihood of additional and substantial opposition to California's petition, the complexity of the issues involved, and the fundamental state interests at stake, the CPUC respectfully submits that good cause exists for granting the CPUC an additional 45 days, to and including November 18, 1994, in which to file its reply comments. Such an extension is commensurate within the near six-week period allotted for responses to the CPUC's petition.

At the same time, no party will be prejudiced if the requested extension is granted. The CPUC is mindful of the time frame mandated by the Budget Act under which the FCC must complete its review of state petitions. However, an additional 45 days accorded the CPUC will not detrimentally affect the FCC's ability to meet any statutory deadline set forth in the Budget Act. Indeed, the FCC will be well served by having a complete record from the CPUC carefully analyzing specific conditions within intrastate cellular markets in California which demonstrate that market forces are not yet adequate to ensure just, reasonable and nondiscriminatory rates for intrastate cellular service.

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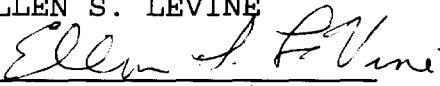
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WHEREFORE, the CPUC respectfully requests that this emergency motion seeking an additional 45 days, to and including November 18, 1994, to reply to the oppositions to its petition be granted.

Respectfully submitted,

PETER ARTH, JR.
EDWARD W. O'NEILL
ELLEN S. LEVINE

By:


Ellen S. LeVine

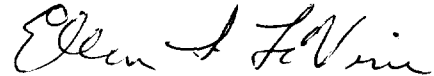
Attorneys for the People of the
State of California and the
Public Utilities Commission of
the State of California

505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2047

September 19, 1994

CERTIFICATE OF SERVICE

I, Ellen S. LeVine, hereby certify that on this 19th day of September, 1994, a true and correct copy of the foregoing EMERGENCY MOTION OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA FOR A 45-DAY EXTENSION OF TIME TO FILE REPLY COMMENTS was mailed first class, postage prepaid to all known parties of record.

A handwritten signature in cursive script, reading "Ellen S. LeVine", written in dark ink.

Ellen S. LeVine

/jmc